Pemungut Duti Setem v Ann Joo Integrated Steel Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(A)-227–04 OF 2022
AZIZAH NAWAWI, SEE MEE CHUN AND CHOO KAH SING JJCA
13 NOVEMBER 2024

Revenue Law — Stamp duty — Assessment — Whether respondent was entitled to remission of stamp duty as it satisfied requirements of Remission Order issued by Minister under Stamp Act 1949 — Whether amount ordered to be remitted by High Court was wrong — Whether since respondent did not cross-appeal against that error and seek refund of the right amount appellate court would not disturb High Court's order

Pursuant to a letter of offer ('the impugned instrument'), the respondent was offered various credit facilities up to a limit of RM105m by a bank. The respondent accepted the offer. After paying a stamp duty of RM525,000 levied by the appellant on the impugned instrument, the respondent sought a remission on the said amount under the Stamp Duty (Remission)(No 2) Order 2012 ('the Remission Order') issued by the Minister of Finance. The Remission Order allowed stamp duty exceeding 0.1% of the amount chargeable under item 22(1)(b) of the First Schedule of the Stamp Act 1949 ('the SA') on a loan agreement or loan instrument without security for any sum or sums of money repayable on demand or in a single bullet repayment, to be remitted. Item 22(1)(b) referred to instruments which were 'for the term of life or any other indefinite period'. In contrast, item 22(1)(a) applied to instruments that were 'for a definite and certain period so that the total amount to be ultimately payable can be ascertained'. The appellant contended that the Remission Order was not applicable to the respondent because the impugned instrument fell under item 22(1)(a) and not item 22(1)(b). Pursuant to s 39(1) of the SA, the respondent appealed to the High Court against the appellant's decision. The High Court allowed the appeal and ordered the appellant to refund to the respondent RM420,000 of the paid stamp duty together with interest thereon at 8%pa from the date the duty was paid to the appellant until the date the said sum was refunded to the respondent. Dissatisfied with the decision, the appellant filed the instant appeal.

Held, unanimously allowing the appeal in part, maintaining the High Court's order for refund of the RM420,000, setting aside the award of interest thereon:

(1) The credit facilities provided in the impugned instrument did not qualify as a loan instrument described in item 22(1)(a) of the First Schedule of the SA as there was neither the grant of a fixed loan amount nor a fixed

repayment sum over a fixed period. The RM105m was merely the maximum limit of credit allowed to the respondent. The respondent could utilise funds up to that limit depending on how much and when it wished to take up the available credit amount. The impugned instrument also did not set out a definite period of repayment. The bank could recall or cancel the credit facilities at any time it deemed fit (whereupon the total amount repayable would be ascertainable) or the respondent could make lump-sum repayments. The impugned instrument therefore fell squarely under item 22(1)(b) of the First Schedule of the SA. Hence, the respondent was entitled to enjoy the benefit afforded by the Remission Order (see paras 20, 23–25, 32–33 & 35).

(2) The respondent had a flexi-repayment arrangement and the repayment amount depended on the terms of the credit facility that was offered. The appellant's suggestion that (in order to avail of the Remission Order) the respondent had to prove that it did not have to pay unless there was a demand from the bank was against financial or common sense. The respondent still had to pay even though there was no demand from the bank. The interpretation adopted by the appellant could not be what the Minister would have had in mind when he exercised his power under s 80(2) of the SA to issue the Remission Order (see para 34).

(3) The amount chargeable for duty in the instant case was RM1.5m. Per item 22(1)(b) of the First Schedule of the SA, the stamp duty payable was RM1,050,000 (ie RM1 on every RM100 or part thereof, or 1%). Applying the terms of the Remission Order, the stamp duty payable after remission was RM1,050 (ie 0.1% of RM1,050,000). The excess amount of stamp duty refundable to the respondent as per the Remission Order was RM1,048,950 (RM1,050,000–RM1,050). Since the respondent had paid RM525,000 in stamp duty, the amount refundable was RM523,950 (RM525,000–RM1,050). The High Court incorrectly ordered a sum of RM420,000 to be refunded. However, since there was no cross-appeal by the respondent on this error and for the correct amount to be refunded, the High Court's order for refund of RM420,000 would not be disturbed (see paras 47–49 & 53).

(4) The 8% interest awarded by the High Court on the RM420,000 was set aside. This was because the appeal to the High Court was made pursuant to s 39(1) of the SA. It was not a suit brought before the High Court for recovery of any debt or damages in respect of which a court could award interest at such rate as it thought fit on the whole or any part of the debt or damages (see s 11 of the Civil Law Act 1956). The order of the High Court was to be amended accordingly (see para 51).

[Bahasa Malaysia summary

Berdasarkan surat tawaran ('suratcara yang dipersoal'), responden ditawarkan pelbagai kemudahan kredit sehingga had RM105 juta oleh sebuah bank. Responden menerima tawaran tersebut. Selepas membayar duti setem sebanyak RM525,000 yang dikenakan oleh perayu ke atas suratcara yang dipersoal, responden memohon peremitan ke atas jumlah tersebut di bawah Perintah Duti Setem (Peremitan)(No 2) 2012 ('Perintah Peremitan') yang dikeluarkan oleh Menteri Kewangan. Perintah Peremitan membenarkan duti setem melebihi 0.1% daripada amaun yang boleh dikenakan di bawah butiran 22(1)(b) Jadual Pertama Akta Setem 1949 ('AS') ke atas perjanjian pinjaman atau suratcara pinjaman tanpa cagaran untuk sebarang jumlah atau jumlah wang yang perlu dibayar balik atas permintaan atau dalam satu bayaran sekaligus, untuk peremitan. Butiran 22(1)(b) merujuk kepada suratcara yang 'sepanjang hayat atau mana-mana tempoh tidak tentu yang lain'. Sebaliknya, butiran 22(1)(a) terpakai untuk suratcara yang 'untuk tempoh tetap dan tertentu supaya jumlah amaun yang perlu dibayar akhirnya dapat dipastikan'. Perayu berhujah bahawa perintah peremitan tidak terpakai kepada responden kerana suratcara yang dipersoal adalah di bawah butiran 22(1)(a) dan bukan butiran 22(1)(b). Menurut s 39(1) AS, responden merayu kepada Mahkamah Tinggi terhadap keputusan perayu. Mahkamah Tinggi membenarkan rayuan dan memerintahkan perayu memulangkan kepada responden RM420,000 duti setem yang telah dibayar berserta faedah ke atasnya pada kadar 8% setahun dari tarikh duti itu dibayar kepada perayu sehingga tarikh wang tersebut dipulangkan kepada responden. Tidak berpuas hati dengan keputusan itu, perayu memfailkan rayuan semasa.

Diputuskan, sebulat suara membenarkan sebahagian rayuan, mengekalkan perintah Mahkamah Tinggi untuk pembayaran balik RM420,000 dan mengetepikan pemberian faedah ke atasnya:

(1) Kemudahan kredit yang disediakan dalam suratcara yang dipertikaikan tidak dikira sebagai suratcara pinjaman yang dinyatakan dalam butiran 22(1)(a) Jadual Pertama SA kerana tiada pemberian amaun pinjaman tetap mahupun pembayaran balik tetap dalam tempoh yang ditetapkan. RM105 juta itu hanyalah had maksimum kredit yang dibenarkan kepada responden. Responden boleh menggunakan dana sehingga had itu bergantung pada jumlah dan bila ia ingin mengambil jumlah kredit yang ada. Suratcara yang dipersoal juga tidak menetapkan tempoh pembayaran balik yang pasti. Bank boleh memanggil semula atau membatalkan kemudahan kredit pada bila-bila masa yang difikirkan sesuai (di mana jumlah yang perlu dibayar balik akan dapat dipastikan) atau responden boleh membuat pembayaran balik sekaligus. Oleh itu, suratcara yang dipersoal itu jatuh tepat di bawah butiran 22(1)(b) Jadual Pertama AS. Oleh itu, responden berhak menikmati faedah yang

diberikan oleh perintah peremitan (lihat perenggan 20, 23–25, 32–33 & 35).

(2) Responden mempunyai pengaturan pembayaran balik yang fleksibel dan jumlah bayaran balik bergantung kepada syarat kemudahan kredit yang ditawarkan. Cadangan perayu bahawa (untuk mendapatkan perintah peremitan) responden perlu membuktikan bahawa ia tidak perlu membayar melainkan terdapat permintaan daripada bank adalah bertentangan dengan kewangan atau kewajaran. Responden tetap perlu membayar walaupun tiada permintaan daripada pihak bank. Tafsiran yang diterima pakai oleh perayu tidak boleh seperti yang difikirkan oleh Menteri apabila beliau menggunakan kuasanya di bawah s 80(2) AS untuk mengeluarkan perintah peremitan (lihat perenggan 34).

(3) Amaun yang dikenakan untuk duti dalam kes semasa ada RM1.5 juta. Sebagaimana butiran 22(1)(b) Jadual Pertama AS, duti setem yang perlu dibayar adalah RM1,050,000 (iaitu RM1 pada setiap RM100 atau sebahagian daripadanya, atau 1%). Dengan menggunakan terma perintah peremitan, duti setem yang perlu dibayar selepas peremitan adalah RM1,050 (iaitu 0.1% daripada RM1,050,000). Jumlah lebihan duti setem yang boleh dikembalikan kepada responden mengikut perintah peremitan adalah RM1,048,950 (RM1,050,000–RM1,050). Memandangkan responden telah membayar RM525,000 sebagai duti setem, jumlah yang harus dikembalikan adalah RM523,950 (RM525,000–RM1,050). Mahkamah Tinggi tersilap mengarahkan wang sebanyak RM420,000 dikembalikan. Walau bagaimanapun, oleh kerana tiada rayuan balas oleh responden mengenai kesilapan ini dan untuk jumlah yang betul dikembalikan, perintah Mahkamah Tinggi untuk bayaran balik sebanyak RM420,000 tidak akan diganggu (lihat perenggan 47–49 & 53).

(4) Faedah 8% yang diberikan oleh Mahkamah Tinggi ke atas RM420,000 telah diketepikan. Ini kerana rayuan kepada Mahkamah Tinggi dibuat menurut s 39(1) AS. Ia bukanlah saman yang dibawa ke Mahkamah Tinggi untuk mendapatkan semula apa-apa hutang atau ganti rugi yang berkenaan dengannya mahkamah boleh memberikan faedah pada kadar yang difikirkan sesuai pada keseluruhan atau mana-mana bahagian hutang atau ganti rugi (lihat s 11 daripada Akta Undang-Undang Sivil 1956). Perintah Mahkamah Tinggi hendaklah dipinda dengan sewajarnya (lihat perenggan 51).]

Cases referred to

Ann Joo Integrated Steel Sdn Bhd v Pemungut Duti Setem [2023] 8 MLJ 73; [2022] 10 CLJ 722, HC (refd)

Littman v Baron (Inspector of Taxes) [1951] 2 All ER 393, CA (refd)

A *Pemungut Duti Setem v BASF Services (M) Sdn Bhd* [2009] 5 MLJ 348, CA (refd)
United Malayan Banking Corp Bhd v Pekeliling Triangle Sdn Bhd and another appeal [1991] 2 MLJ 559, SC (refd)

B **Legislation referred to**
Civil Law Act 1956 s 11
Finance Act 2018 s 68
Stamp Act 1949 ss 38A(5), 39(1), 80(2), First Schedule, items 22, 22(1)(a), (1)(b), 27, 27(a)(iii)
C Stamp Duty (Remission) (No 2) Order 2012

Appeal from: *Ann Joo Integrated Steel Sdn Bhd v Pemungut Duti Setem* [2023] 8 MLJ 73 (High Court, Kuala Lumpur)

D *Normareza Mat Rejab (with Syazana Safiah Rozman, Mohammad Hafidz bin Ahmad and Muhammad Danial Izzat) (Inland Revenue Board of Malaysia) for the appellant.*
S Saravana Kumar (with Nur Hanina Mohd Azham) (Rosli Dahlan Saravana Partnership) for the respondent.
E

Choo Kah Sing JCA:

INTRODUCTION

F **[1]** The respondent filed an appeal to the High Court by way of case stated pursuant to s 39(1) of the Stamp Act 1949 (revised 1989) ('the Act'). The respondent's appeal was against the appellant's decision made on 8 March 2021 (pursuant to s 38A(5) of the Act) in that the appellant had rejected the
G respondent's notice of objection dated 16 November 2020 which was in response to a notice of assessment of stamp duty dated 13 February 2019 ('the notice of assessment') issued by the appellant.

[2] On 30 March 2022, the learned High Court judge allowed the
H respondent's appeal. Consequently, the appellant's notice of assessment was set aside.

[3] Dissatisfied with the decision of the learned High Court judge, the appellant filed this appeal. For ease of reference, the appellant shall hereafter be
I referred to as 'the collector'.

(Note: The High Court decision is reported as *Ann Joo Integrated Steel Sdn Bhd v Pemungut Duti Setem* [2023] 8 MLJ 73; [2022] 10 CLJ 722.)

[4] On 3 July 2024, this court, after having read the written submissions and after having heard the oral submissions from the counsels for the respective parties, reserved its decision. We now deliver our decision, and the reasons for the decision are set out below.

SALIENT FACTS

[5] By way of a letter of offer dated 27 December 2018 ('the impugned instrument') issued by Alliance Bank Malaysia Bhd ('the Bank') to the respondent, the Bank agreed to offer various credit facilities to the respondent, and the respondent agreed to accept the offer of the various credit facilities. The various credit facilities comprised of various trade facilities up to the limit of RM100m in the forms of letter of credit, trust receipt, foreign currency trust receipt, bankers acceptance and foreign currency promissory notes (collectively hereafter be referred to as 'the trade facilities') and the facility of forward foreign exchange up to the limit of RM5m ('the Forex'). Hence, the total credit facilities offered in the impugned instrument was up to the limit of RM105m ('the credit facilities amount).

[6] It is instructive to understand the difference between the terms 'amount chargeable for duty' and 'amount of stamp duty that is chargeable'. The 'amount chargeable for duty' means the amount that is to be used for the calculation of the stamp duty to be paid; whereas, the 'amount of stamp duty that is chargeable' means the stamp duty payable.

[7] Two things are not in dispute. First, the impugned instrument is an instrument chargeable with duty. Second, the sum of RM105m (or the credit facilities amount) is the amount chargeable for stamp duty. The heart of the dispute is: what is the amount of stamp duty payable on the amount chargeable for stamp duty?

[8] The respondent asserted that it was entitled to benefit from the Stamp Duty (Remission) (No 2) Order 2012 ('the Remission Order') for a remission of the stamp duty payable under item 22(1)(b) of the First Schedule of the Act. The collector disagreed with the respondent's assertion. The collector opined that the amount of stamp duty payable falls under item 22(1)(a), instead of 22(1)(b) of the First Schedule of the Act, and that the stamp duty payable was RM525,000. Further, the collector disagreed with the respondent that the Remission Order was applicable to the respondent. As such, the respondent could not rely on the Remission Order to seek for refund of the stamp duty already paid.

[9] The learned High Court judge was in favour of the respondent's argument in that the impugned instrument did not qualify to fall within the

envisaged meaning as per item 22(1)(a) of the First Schedule of the Act vis a vis 'for a definite and certain period so that the total amount to be ultimately payable can be ascertained'. Therefore, the High Court held that the collector's reliance on the stamp duty payable under item 22(1)(a) of the First Schedule of the Act (which refers to the same *ad valorem* duty as a charge or mortgage) was incorrect and wrong in law.

[10] The High Court found that the impugned instrument was qualified to be an instrument that falls within item 22(1)(b) of the First Schedule of the Act. Therefore, it follows that the Remission Order was applicable to the respondent, and the respondent was entitled to seek for a refund based on the Remission Order from the amount which it had already paid for the stamp duty.

THE FINDINGS OF THIS COURT

Item 22(1)(a) or (b) of the First Schedule of the Act?

[11] The question that was posed to the High Court was: 'Whether the letter of offer falls within the Remission Order. If the answer is yes, the respondent is entitled to a remission of stamp duty that is in excess of 0.1%'.

[12] This court opines that the first question that ought to be determined is: whether the impugned instrument could qualify to be an instrument as described in item 22(1)(b) of the First Schedule of the Act? If the answer is in the negative, then it is unnecessary to refer to the Remission Order. The Remission Order only applies to an instrument upon which stamp duty payable under item 22(1)(b) of the First Schedule of the Act. The Remission Order does not apply to an instrument upon which stamp duty payable under item 22(1)(a) of the First Schedule of the Act.

[13] It is trite law that when dealing with the Act, emphasis must be placed on the instrument concerned, not the transaction in the instrument (see *Pemungut Duti Setem v BASF Services (M) Sdn Bhd* [2009] 5 MLJ 348 (CA)).

[14] For ease of reference, item 22(1) of the First Schedule of the Act is reproduced below.

22	BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:	
	(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack-	
	(a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained.	The same *ad valorem* duty as a charge or mortgage for such total amount.
	(b) for the term of life or any other indefinite period-	
	for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable	RM1.00
	[(1) Subs. Act 812:s.68]	

[15] Although the impugned instrument has been referred to as a 'Letter of Offer', in substance, it was a loan instrument or loan agreement (*perjanjian pinjaman*). In order for the impugned instrument to qualify as an instrument mentioned in item 22(1)(b) of the First Schedule of the Act, the amount chargeable for stamp duty, ie, the credit facilities amount (up to the limit of RM105m), has to be 'for the term of life or any other indefinite period'. In other words, the impugned instrument for the total credit facilities amount (up to the limit of RM105m) in the various credit facilities does not set down the tenure of the loan period nor limit the period of time for the repayment of the credit facilities amount. In short, the various credit facilities amount did not amount to a fixed term loan with fixed amount of repayment over a fixed period of time.

[16] The counsel for the collector submitted that the learned High Court judge 'failed to appreciate that the Letter of Offer clearly stipulates a tenure of up to 180 days for the credit facilities'. Further, it was submitted that 'the fact that overdue interest may be imposed signifies that the credit facilities were subject to the tenure and due dates as mentioned in the other terms and conditions contained in the attachments to the Letter of Offer'. In other words, the counsel for the collector argued that the various credit facilities stated in the impugned instrument were 'for a definite and certain period so that the total amount to be ultimately payable can be ascertained' (see the wordings in item 22(1)(a) of the First Schedule of the Act).

[17] We find the counsel for the collector has misconceived the nature of the various credit facilities and the terms as provided in the impugned instrument.

[18] The phrase 'for a definite and certain period so that the total amount to be ultimately payable can be ascertained' stated in item 22(1)(a) of the First Schedule of the Act denotes two things. First, the phrase 'for a definite and certain period' refers to a fixed length of time. Second, the phrase 'so that the total amount to be ultimately payable can be ascertained' refers to the amount to be paid over the fixed length of time which can be ascertained. The credit facilities amount, ie, RM105m, granted in the letter of offer was not for a fixed term neither was it for a definite period or for a certain period.

[19] The specific conditions for the trade facilities in the impugned instrument states as follows:

> (i) Repayment
>
> Notwithstanding any other provisions herein stated related to the availability of the Facility or any part thereof, the Bank reserves the right to recall/cancel the facility or any part thereof at any time it deems fit without assigning any reason thereto by giving written notice of the same, whereupon the facility of such part thereof shall be cancelled and the whole indebtedness or such part thereof be repayable on demand.

A similar term (as above) is found in the part for the Forex facility.

[20] Nowhere in the impugned instrument does it set out a definite and certain period of the repayment of the credit facilities amount. Hence, the offer of the credit facilities amount is open until such time the bank exercises its right to recall or cancel the entire credit facility or any part thereof at any time as it deems fit without assigning any reason thereto. Further, the total amount to be ultimately payable could only be ascertainable upon the bank exercising its right to recall or cancel the credit facilities.

[21] The collector's counsel submitted that each of the trade facility provided a usance tenure or tenure of 'up to 180 days', therefore, there was a definite and certain period provided in the terms of the credit facility. This court could not agree with the submission. The usance tenure or tenure 'up to 180 days' denotes the maximum credit period which the respondent could enjoy or benefit.

[22] The usance tenure (as in the letter of credit facility) refers to the allowable period of time between the date of the bill and its payment; and tenures in other trade facilities are reference to the credit period, and the credit period depends on the request of the respondent, as long as it is not more than 180 days. If the usance tenure or tenure of 'up to180 days' is to be construed as a definite and certain period, then no credit facility could qualify as one for 'the term of life or any other indefinite period'. In short, the usance tenure or tenure of 'up to 180 days' has to mean and to be construed in relation to the limit of

the credit period, and is not meant to be 'a definite and certain period.' In other words, the repayment period is not fixed in that there is no definite and certain period for repayment as opposed to a fixed term loan with specified or ascertained repayment amount(s) to be paid over a fixed period.

[23] The credit facilities amount was set at a limit up to the amount of RM105m. Although the impugned instrument has allocated a fixed credit amount (loan amount) available for each specific credit facility, that credit amount is not necessarily the loan amount, but a credit limit for which the respondent could utilise up to that specific amount. It is up to the respondent to decide how much and when to take up the available credit amount. Although there is a clause which requires the respondent to maintain a trade utilisation of 70% of the credit facilities, that is still not a fixed term of the credit facilities offered by the Bank. In addition, there is no ascertainable payable amount until such time the utilised credit facilities are recalled or cancelled.

[24] Based on the above analysis, the total amount of the credit facilities could not be construed as a credit facility that provides 'a definite and certain period' as required in item 22(1)(a) of the First Schedule of the Act. The terms of the credit facilities have no characteristic of 'a definite and certain period' and a 'total amount to be ultimately payable can be ascertained'. The latter character hinges on the former character. Therefore, the credit facilities provided in the impugned instrument could not qualify as a loan instrument described in item 22(1)(a) of the First Schedule of the Act.

[25] As mentioned above, the credit facilities in the impugned instrument were not for a fixed term loan and there was no fixed term repayment period, therefore, they fall squarely within the meaning of a loan 'for the term of life or any other indefinite period'. The credit facilities were for a term of life and has an indefinite period until such time the bank exercises its contractual right to recall or cancel the various credit facilities. Hence, the impugned instrument has satisfied the requirements as set down in item 22(1)(b) of the First Schedule of the Act.

[26] The question posed from the outset vis a vis whether the impugned instrument could qualify to be an instrument as described in item 22(1)(b) of the First Schedule of the Act is answered in the affirmative. It then follows that the question whether the Remission Order applies would become pertinent.

The Remission Order

[27] The Remission Order is reproduced below:

STAMP ACT 1949

STAMP DUTY (REMISSION) (NO. 2) ORDER 2012

IN exercise of the powers conferred by subsection 80(2) of the Stamp Act 1949 [*Act 378*] the Minister makes the following order:

Citation

1. This order may be cited as the **Stamp Duty (Remission) (No. 2) Order 2012**.

Remission

2. The amount of stamp duty that is chargeable under subsubitem 22(1)*(b)* of the First Schedule to the Act upon a loan agreement or loan instrument without security for any sum or sums of money repayable on demand or in single bullet repayment under that subsubitem which is in excess of zero point one per cent (0.1%) is remitted.

Made 25 July 2012
[CR(8.09)248/39/7-217 JLD.7(SK.9); PN(PU2)159/XXXVI]

DATO' SERI AHMAD HUSNI MOHAMAD HANADZLAH
Second Minster of Finance

[28] The burden is on the respondent to satisfy the court that it is entitled to rely on the Remission Order (see *Littman v Baron (Inspector of Taxes)* [1951] 2 All ER 393 as cited by the collector's counsel).

[29] In order to qualify to enjoy the benefit of the Remission Order, there are four conditions. First, the stamp duty is chargeable under item 22(1)(b) of the First Schedule of the Act. Secondly, it must be a loan agreement or loan instrument. Thirdly, the entire loan sum or credit facility is not secured with any security, and lastly, the sum(s) or money owing is repayable on demand or in single bullet repayment. 'Single bullet payment' simply means a lump sum payment made for the entirety of an outstanding loan amount.

[30] As elucidated above, the impugned instrument has satisfied the requirements to be an instrument within the envisaged meaning of item 22(1)(b) of the First Schedule of the Act. The impugned instrument is a loan agreement or loan instrument. The parties agreed that the various credit facilities were offered without the need to pledge any security, it was on a 'clean basis'. Thus far, the respondent has satisfied the first three conditions.

[31] With regard to the last condition, the counsel for the collector submitted that it is only when the bank exercises its right to recall or cancel the various credit facilities will the respondent is required to repay the sum(s) owing on demand or in single bullet repayment. In other words, the counsel for the collector takes the position that the Remission Order only applies when any

outstanding sum owing to the bank is repayable on demand. If the respondent is required to pay (whatever the amount is) even if no demand has been made by the bank, then the Remission Order could not be applicable. The counsel for the collector submitted that 'there is no provision in the Letter of Offer that the Respondent does not need to pay the loan unless and until it is demanded by the bank. This being the case, the Letter of Offer is not an instrument that falls under the Remission Order'. On that score, the impugned instrument could not be qualified to enjoy the benefit of the Remission Order, the counsel for the collector submitted.

[32] The phrase 'any sum or sums of money repayable on demand or in single bullet repayment' has to be understood in this manner. The phrase 'sum or sums of moneys' refers to the outstanding loan amount. The word 'repayable' simply means to pay back (to the bank). There are two situations in which the outstanding loan amount could be paid back to the bank. First, when the bank requests the outstanding loan amount to be paid back vis a vis the bank demands for the outstanding loan amount to be paid back, in other words, repayable on demand. Second, the outstanding loan amount is repayable in a lump sum payment vis a vis the outstanding loan amount is repayable in a single bullet payment. In this second situation, the bank does not need to demand for the repayment, rather the manner in which the loan amount is repayable has been spelled out as a term of the repayment of the loan sum. This interpretation of the two situations is resonant with the word 'or' is being used in the phrase, ie repayable on demand *or* in single bullet repayment.

[33] This court finds the interpretation adopted by the counsel for the collector is not reasonable. All loans from any financial institutions are required to be repaid whether by staggered payment (by instalment with a specific fixed amount) or flexi-payment (without a specific fixed amount). No financial institution would offer a loan without any repayment term or provide that repayment is only required when the financial institution demands for it, as suggested by the counsel for the collector.

[34] The various credit facilities provided by the bank are in the form of credit in nature in the sense that the funds (moneys) are readily available for the respondent to draw down at any time as it pleases or requires as opposed to a conventional loan in that the loan amount is disbursed in full (immediate or at certain fixed time). The respondent has a flexi-repayment of any funds which have been drawn down, and the repayment amount (the principal and chargeable interest) depends on the terms of the credit facility that was offered. To suggest the requirement that respondent has to prove that it need not pay unless there is a demand made by the bank is against any financial or commercial sense. The respondent still has to pay even there is no demand made against it by the bank. How much and when to pay depends on the

respondent's financial commitment at that material time. The lesser the amount and the longer the time of the repayment means the more chargeable interest will be imposed on the outstanding amount. Hence, this court is of the firm view that the interpretation taken by the counsel for the collector could not be what the Minister had in mind when he exercised his power conferred by sub-s 80(2) of the Act in making the Remission Order.

[35] Based on the above analysis, a *fortiori*, the phrase 'repayable on demand' has to refer to circumstances where the terms of the loan instrument have provided the lender (the bank) the contractual right to demand for the full outstanding sum to be repaid immediately even when there is no express term that the borrower has to pay the outstanding sum (or in part). In the present case, the bank has reserved its right to recall or cancel the facility or any part thereof at any time it deems fit without even assigning any reason thereto, and upon doing so, the whole indebtedness or such part thereof shall be repayable on demand. The right of 'repayable on demand' has been expressly stipulated in the specific conditions for the trade facilities as well as in the Forex facility. Hence, this court is of the considered view that the last condition of the Remission Order has been fulfilled, and that the respondent is entitled to enjoy and rely on the benefit of the Remission Order.

The amount entitled to be refunded under the Remission Order

[36] The stamp duty that the respondent had paid was based on the assessment notice dated 13 February 2019 in which the stamp duty payable was stated to be the sum of RM525,000. Below is the tabulation of the amount of the stamp duty payable:

> RM105,000 x 0.5% (for each RM1,000 the stamp duty payable is RM5 or 1,000 x 100%) = RM525,000

[37] The stamp duty payable (according to the collector's case) was based on item 27(a)(iii) of the First Schedule of the Act. This is because the collector had referred to item 22(1)(a) of the First Schedule of the Act as the appropriate reference to the stamp duty payable which referred to the same *ad valorem* duty as a charge or mortgage instrument as per item 27 of the First Schedule of the Act. As the impugned instrument could not fit into any of the specific instruments mentioned in item 27, therefore, item 27(a)(iii) would be the appropriate reference vis a vis in any other case — for each RM1,000 or part thereof the stamp duty payable is RM5 (which also means 0.5% of the amount chargeable for stamp duty).

[38] The respondent submitted that the reliance on item 22(1)(a) of the First Schedule of the Act by the collector for the tabulation of the stamp duty payable was incorrect. The respondent submitted that since it was entitled to

rely on the Remission Order, after having satisfied the court that item 22(1)(b) of the First Schedule of the Act is the appropriate provision, therefore, the impugned instrument should be stamped at the rate of 0.1% of the amount chargeable for stamp duty vis a vis the amount of stamp duty payable is 0.1% of the amount of RM105m. Therefore, the amount of the stamp duty payable ought to be the sum of RM105,000, the respondent counsel submitted. The tabulation for the stamp duty payable (according to the respondent's counsel) is as below:

RM105,000,000 x 0.1% = RM105,000

[39] The respondent sought for a refund of RM420,000 (RM525,000–RM105,000). The learned High Court judge then made the following relevant orders:

(3) A declaration that the applicable stamp duty chargeable upon the letter of offer dated 27 December 2018 executed between the plaintiff (the respondent) and Alliance Bank Malaysia Bhd amounts to RM105,000;

...

(7) An order that RM420,000 being the excess stamp duty which has been paid to the respondent (the collector) as a result of the erroneous assessment shall be refunded to the plaintiff (the respondent) within 14 days from the date this order is granted by this honorable court with interest accruing at the rate of 8% on the said sum from the date the payment was made to the respondent (the collector);

[40] This court finds the respondent's counsel's submission that the impugned instrument should be stamped at the rate of 0.1% of the amount chargeable for stamp duty which amounted to RM105,000 is incorrect in law.

[41] As explained earlier, the terms 'amount chargeable for duty' and 'amount of stamp duty that is chargeable' have different connotations. The 'amount chargeable for duty' means the amount that is to be used for the calculation of the stamp duty payable; whereas, the 'amount of stamp duty that is chargeable' means the stamp duty payable.

[42] The court must read the wording in the Remission Order in its plain, literal and natural meaning (see *United Malayan Banking Corp Bhd v Pekeliling Triangle Sdn Bhd and another appeal* [1991] 2 MLJ 559 (SC)).

[43] The Remission Order begins with the phrase 'the amount of stamp duty that is chargeable', therefore, it refers to the stamp duty payable. It does not refer to the amount chargeable for duty. The Malay language version of the Remission Order begins with 'amaun duti setem yang boleh dikenakan' which simply means the amount of stamp duty that is chargeable or payable. In essence, the Remission Order could be read as 'The amount of stamp duty that

is chargeable under sub-item 22(1)(b) of the First Schedule to the Act ... which is in excess of zero point one per cent (0.1%) is remitted'.

[44] The stamp duty payable in item 22(1)(b) of the First Schedule of the Act refers to 'for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable' shall be RM1 (as stated in the last column 'Proper Stamp Duty'). In other words, the stamp duty payable for every RM100 is RM1, which translates to 1% of every RM100 or any part thereof. Therefore, in the present case, if the stamp duty payable is based on item 22(1)(b) of the First Schedule of the Act, then the stamp duty payable would be in the sum of RM105m (RM105m x 1%).

[45] Based on the above, if the amount of stamp duty payable is RM1,050,000, then any amount in excess of 0.1% of the stamp duty payable shall be remitted.

[46] It is incorrect to take 0.1% (as stated in the Remission Order) as the stamp duty payable. The '0.1%' stated in the Remission Order is in reference to the stamp duty which has to be paid in accordance with item 22(1)(b) of the First Schedule of the Act in which the stamp duty payable is 1% of the amount chargeable for stamp duty. The amount chargeable for stamp duty is RM105m.

[47] Below is the correct tabulation of the stamp duty payable based on item 22(1)(b) of the First Schedule of the Act and the application of the Remission Order:

The amount chargeable for duty	RM105,000,000
The proper stamp duty that is chargeable (or payable) based on item 22(1)(b) of the First Schedule of the Act — for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable is RM1	1%
The stamp duty payable based on item 22(1)(b) of the First Schedule of the Act	RM1,050,000
The amount of stamp duty that is chargeable which in excess of 0.1% is remitted (the amount to be remitted if it is based on the above tabulation)	RM1,048,950
Therefore, the stamp duty payable (after remission) is:	RM1,050

[48] The respondent had paid total stamp duty of RM525,000, therefore, the correct amount to be refunded after having taken into consideration the proper amount of stamp duty to be paid, ie, RM1,050, is RM523,950

(RM525,000 less RM1,050) as the excess amount. The High Court had incorrectly ordered the sum of RM420,000 as the excess amount to be refunded.

[49] However, since there is no cross-appeal filed by the respondent on this error, this court will not disturb the order granted by the learned High Court judge in relation to the amount to be refunded.

Other issues

[50] Although the collector's counsel in the submission has raised the issue of whether the amendment to item 22 (see Finance Act 2018 (Act 812); s 68) applies to the respondent's case, this issue is no longer relevant, as the respondent's counsel did not challenge that the new amendment applied to the respondent's case. Further, as rightly submitted by the collector's counsel, the impugned instrument was brought for adjudication on 31 January 2019, which was after the amendment of the law had come into force on 28 December 2018.

[51] With regard to the High Court's order ordering 8% interest on the sum of RM420,000 to be calculated from the date the payment was made to the collector until the said sum is refunded to the respondent, this court is troubled by this order. As rightly submitted by the collector's counsel, the respondent's case was a stamp duty appeal under s 39(1) of the Act. The appeal at the High Court below was not a suit brought before the court for recovery of any debt or damages in which a court could give interest at such rate as it thinks fit on the whole or any part of the debt or damages (see s 11 of the Civil Law Act 1956). This objection raised by the collector's counsel ought to be allowed. Therefore, the High Court order dated 30 March 2022 in granting accrued interest of 8% on the sum of RM420,000 ought to be set aside and amended accordingly.

CONCLUSION

[52] For the above reasons, this court, in a unanimous decision, allows the appeal in part and makes the following orders:

(a) the High Court order dated 30 March 2022 granting accrued chargeable interest at the rate of 8% on the sum of RM420,000 shall be set aside;

(b) the applicable stamp duty chargeable (payable) on the impugned instrument (or letter of offer dated 27 December 2018) executed between the respondent and the bank (Alliance Bank Malaysia Bhd) is a sum of RM105m;

(c) the remaining orders in the High Court order dated 30 March 2022 shall be upheld and maintained, and the said High Court order shall be

A amended accordingly to reflect the decision of this court; and

(d) no order as to costs.

[53] On a final note, since there is no cross-appeal by the respondent for the correct amount to be refunded, therefore, the sum of RM420,000 as ordered to be refunded to the respondent by the appellant by the High Court order dated 30 March 2022 shall be maintained.

Appeal allowed in part, High Court's order for refund of RM420,000 maintained but award for interest set aside.

Reported by Ashok Kumar